FROM THE MINISTER OF HEALTH

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An Roinn Sláinte
Männystrie O Poustie
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Your Ref: C211/21
Our Ref: CORR/2310/2021
Date: 22nd July 2021

Dear Colm,

Thank you for your letter of 5 July 2021 regarding consideration of amendments and requests for clarification identified by the Health Committee during deliberation and scrutiny of the provisions of Health and Social Care (Northern Ireland) (2021) Bill.

This letter aims to provide both relevant background information and clarification in respect of the individual items highlighted in your letter and a response to the request to consider amendments to the Health and Social Care (Northern Ireland) (2021) in specific areas.

Clarification on Future Planning Model Framework timeline and when the Department would expect the new local engagement structure to be put within regulation

The ICS model will provide the structure and mechanisms to ensure that local input and intelligence continues to inform the planning processes. I shared the Draft Framework document with you on the 26 May and Officials provided briefing to you following that. A consultation on the Draft Future Planning Framework has now also been launched.

A fully functioning ICS model will not be in place on the 1 April 2022 as the associated funding and governance arrangements will take time to develop however the structures through which local input will be provided will be.

It is expected that each of the 5 Area Integrated Planning Boards will have been established and have produced the following by the 1 April 2022;

- Create a suitable partnership agreement for each AIPB at *Area* level to formalise and underpin the work of the group – this should be ratified by the Regional Group in advance of **1 April 2022**;
- Each AIPB must develop a Decision Making Framework for their *Area*, detailing how decisions will be made to provide clarity and transparency between the local levels. This should be ratified by the AIPB in advance of **1 April 2022**;
- Produce a Terms of Reference for each AIPB at *Area* level to be ratified by the Regional Group in advance of **1 April 2022.**

Whilst legislation in respect of ICS models is in place in other jurisdictions (e.g. Scotland), or is in the process of being developed (e.g. England), this has only come after their ICS models have had time to develop and be tested over the course of a number of years.

Given the scale of the task in hand and the need to be cognisant of the pressures within the system as a consequence of the ongoing Covid-19 situation, a phased approach is being taken to the development of the ICS model.

The ICS model should be provided with the time and opportunity to develop and mature before being bound or formalised in specific legislative requirements, if required.

Allowing time will also ensure that any legislative requirements that may be identified as necessary are the right ones, and that the future planning model is not inadvertently constrained by legislation at this early stage before the right structure, processes and working practices have been identified and are in place.

At this point it would not be helpful to commit to a specific date for the delivery of Primary or Secondary legislation which may constrain the development of a final functioning ICS model.

Possible amendment to the Bill that would allow Local Commissioning Groups to continue until the new Integrated Care Framework is in place

As you know, the Health and Social Care Bill will effect closure of the HSCB and remove the statutory requirement and basis for LCGs. As LCGs are constituted as Committees of the HSCB they will cease to exist on the closure of the HSCB.

The current planning assumption is that the HSCB will close on the 31 March 2022 and with it LCGs (subject to legislative provision). New arrangements including the developing ICS model will come into operation on the 1 April 2022. A fully functioning ICS model will not be in place on the 1 April 2022 but the structures through which an avenue for local input will be provided will be in place.

The current LCG system is involved in the development of the evolving ICS model and will help inform the early work undertaken by ICS and the establishment of the necessary infrastructure as we move forward.

A fully developed mature ICS is likely to achieve a great deal more delegated authority to utilise resources available for each area and to act flexibly to deliver health and wellbeing outcomes in their locality rather than is the case with LCGs.

The implications and consequences of the option to introduce an amendment that would allow LCGs to continue until the new Integrated Care System matures are detailed below.

Resources within both the Department, HSCB and across the wider Health family are finite. Resources currently working on the development and establishment of the ICS model would have to be diverted to undertake the significant work required in both preparing for and extending LCGs beyond the closure of the HSCB should that be required.

It is likely that current members of LCGs have the skills, knowledge and experience that we will be seeking in terms of membership and participation in the various levels of the ICS model. It would be difficult for individuals to give the necessary time and focus to both an extended LCG and the evolving ICS model should that be required. As a result there is a risk the talent pool available to the ICS model may be diminished and further that confusion around roles and competing priorities are evident across future planning/commissioning. This could ultimately impede the successful development and evolution of an ICS model

A new statutory basis for LCGs would have to be developed and drafted for inclusion within the Bill. The delivery of a satisfactory amendment would require a significant degree of development to become a coherent legislative provision.

Before reaching the point of instructions being issued to the Office of Legislative Counsel a fully formed policy position would need to be in place. I have indicated below some of the policy decisions to be fully developed and agreed if an amendment was to be taken forward:

- Who has responsibility for LCGs, options include the Department, PHA or BSO, in each case the existing primary legislative duties, powers and responsibilities of each organisation would have to be considered and perhaps further primary legislation or regulations considered to facilitate a relevant amendment;
- What type of consultation will be required, with whom and what would be the timescales and impact on the passage of the Bill given the approaching end of the Assembly mandate;

In addition to the policy decisions noted above the potential impact of the following would require consideration:

- It is unlikely the tenure of current members can be simply extended as they would end their connection with the HSCB and have to be connected to another body. If not a simple extension what recruitment mechanism is to be used, i.e. ministerial appointment if Department, or other if PHA or BSO.
- Will suitable individuals wish to apply for appointment to an LCG that has a finite life span;
- Is there sufficient time within the current Assembly mandate to get any additional legislative requirement across the line? If not the implementation of an ICS model is significantly delayed.

I note the current engagement and influence of LCGs with the evolving ICS model, the planning timescales in terms of LCG closure and establishment of an evolving ICS model.

The work and time required to develop an agreed amendment for this purpose and deliver the necessary required associated requirements place both the passage of the

Bill within the remaining mandate and the closure of the HSCB at risk. I am not minded to introduce an amendment to the Bill for this purpose.

Possible amendment to the Bill or a process that would allow the Committee a role in the scrutiny of transitional arrangements

Officials have engaged with the Committee providing briefing and detail on the proposed way forward in terms of the Draft ICS Model Framework and are committed to ensuring that this continues as work on the model progresses.

I can assure you that I am content that Officials will continue to provide regular updates in this regard and suggest that an agreed schedule for the provision of written or oral briefing be established and agreed and finalised with the Committee in due course. I do not feel that an amendment to the Bill is therefore necessary.

The Committee would like to see how the governance framework can be strengthened to enhance the transparency of decision making and would like the Department to consider if amendments could be made to the Bill that would provide the Committee with that assurance.

The current commissioning process will remain the same on the 1 April 2022 albeit will reflect the closure of the HSCB. There will be a continued need to monitor the delivery of outcomes, performance and financial accountability within existing structures and organisations, and mechanisms will be in place to achieve this.

The work undertaken by the Strategic Performance and Planning Group within the Department which will comprise former HSCB staff will be directed by a Senior Civil Servant of the Department. The Strategic Performance and Planning Group will be subject to Departmental governance arrangements. The current HSC Framework document will be updated to reflect the closure of the HSCB and governance arrangements.

In relation to the ICS model, the draft framework for the model does set out the requirement for each local area to develop partnership agreements and decision-making frameworks to provide transparency and clarity on the approach to collaborative working and decision-making.

The development of new governance and funding mechanism will take time and therefore the model will operate within the extant arrangements initially. The ICS model will reach maturity at the point that new governance mechanisms are in place facilitating devolved funding and decision making powers to ICS, at this point, the HSC Framework will again be updated accordingly.

The development of a suitable amendment as suggested by the Health Committee to "strengthen the governance framework" is problematic. Clear articulation of the Health Committee expectation in terms of what is required to strengthen existing governance arrangements would only be a starting point in the development process. Following this the Office of Legislative Counsel would have to be provided with a very detailed proposal about what strengthening governance and accountability across the HSC means if they were to draft a relevant legislative amendments.

I am not minded to introduce an amendment for this purpose. I am however content to commit Officials to include ongoing developments regards ICS Governance Framework in scheduled as part of scheduled updates and briefings to Committee.

The Committee would like further clarification on how often reports on commissioning will be produced by the Department and if those reports could contain information on areas such as local engagement and how decisions address health inequalities.

Following the closure of the HSCB, the existing statutory duty for the Department to set the strategic priorities and objectives will remain and a coordinated plan to deliver against these priorities will still be necessary.

The Bill will remove the statutory requirement for the production of a Commissioning Plan by the HSC Board. A plan will however be required and work is ongoing to consider how the current process can be improved.

Specific work streams are in place to consider each step of the process including reporting frequency and the mechanisms which will monitor the performance of the system and it's delivery against the strategic outcomes.

The Committee suggestion that reports could include information on local engagement and health inequalities will be considered as part of the development process.

I am content that Officials include progress on new reports and the development of performance management in ongoing briefings to the Health Committee.

The Committee would like further information on the key differences in the pay scales and terms and conditions that prevented staff from coming into the Department.

HSCB staff have important skills and knowledge, they must be available to support the Department and the wider HSC system post HSCB closure.

I welcome the Health Committee understanding of why the Department will facilitate the transfer of former HSCB staff to the Business Services Organisation when the HSCB closes.

Before I affirmed this decision a number of options were considered, the options included the Hosting model and the transfer of HSCB staff to the Department.

The Hosting arrangement as you have appreciated provides a practical solution to ensuring the skills and expertise of HSCB staff are available to support the Department and the wider HSC planning system, thereby building on the close working which is emerging, whilst enabling HSCB staff to retain their HSC terms and conditions. It also provides a more flexible basis for further redistribution of resource across the HSC should it be required under the future planning model.

The option of transferring HSCB staff into the Department was also considered and a number of factors mitigating against this option were identified these included:

- HSCB staff clearly articulated view that they wished to retain their HSC terms and conditions and the opportunity to continue their careers within the HSC, transfer of staff into the Department raised the potential risk of key HSCB staff seeking to leave and the loss of their skills in both the transition to HSCB closure and in the end state;
- Transfer of HSCB staff into the Department didn't offer the flexibility apparent in the Hosting model;
- Advice was that costs could not be quantified without significant resource intensive detailed work being undertaken in terms of a TUPE type exercise for each individual impacted and that data then would then be used to flush out organisational impacts

A very limited consideration of possible impacts on those at Bands 8A to 8D within the HSCB based on a number of working assumptions was undertaken. The conclusion was that if transferred into the Department they were likely to be placed on marked time in terms of salary for a number of years. Counterparts in the same Bands in the wider HSC would not have had this restriction. This again would have amplified the potential risk of these staff seeking to leave current posts.

A comprehensive analysis of the key differences in the pay scales and terms and conditions between the staff in the HSCB and Civil Service pay scales and terms and conditions was not undertaken. To undertake such work would have been highly resource intensive as it would have required a significant investment to deliver a comprehensive assimilation of the respective pay scales etc. The work would have proved in any case nugatory given the significance of the other reasons already communicated for the selection of the Hosting option.

Yours sincerely

Robin Swann MLA
Minister of Health

Committee for Health

Wendy Patterson
DALO
Department of Health

By email: Wendy.patterson@health-ni.gov.uk

Our Ref.: C211/21

2021

Dear Wendy,

Re: Health and Social Care Bill

At its meeting on 1 July, the Committee for Health commenced its informal deliberations on the Health and Social Care Bill. During the informal deliberations, the Committee agreed that it would like the Department to consider the possibility of amendments in a number of specific areas. The Committee also agreed that there were a few questions where further clarification was needed.

Local input/engagement

The Committee maintains its concern in relation to ensuring, that once the Health and Social Care Board is dissolved, that there is still local engagement and input into commissioning decisions. The Committee is concerned that once the Local Commissioning Groups are dissolved there will be no formal process for local input. The Committee does welcome the Department's proposal for an integrated care system framework. However, the Committee does have concerns that there is no clear timeline for when this will be taken forwarded and implemented.

In this area, the Committee would therefore like:

- Clarification on the timeline for when the new Framework will be in place and when the Department would expect the new local engagement structure to be put within regulation.

- The Committee would like the Department to consider a possible amendment that would allow the Local Commissioning Groups to continue until the new Integrated Care Framework is in place.
- The Committee would like the Department to consider a possible amendment and/or process that would allow the Committee a role in the scrutiny of transitional arrangements.

Openness and Transparency

During deliberations, the Committee raised the issue of openness and transparency in the decision making process for the commissioning of services. The Committee is keen to see a strong governance framework within the new structures.

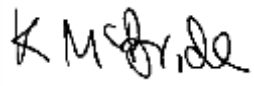
- The Committee would like to see how the governance framework can be strengthened to enhance the transparency of decision making and would like the Department to consider if amendments could be made to the Bill that would provide the Committee with that assurance.
- The Committee would like further clarification on how often reports on commissioning will be produced by the Department and if those reports could contain information on areas such as local engagement and how decisions address health inequalities.

Staffing

During the consideration of evidence, it was highlighted that staff were transferring from the Board to BSO and this was to allow those officials to maintain their current terms and conditions. The Committee understands the reason why the Department has transferred staff into BSO. However, the Committee would like further information on the key differences in the pay scales and terms and conditions that prevented staff from coming into the Department.

I should be grateful if this these areas could be considered by the Department and a response provided by 16 July.

Yours sincerely,



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